

HOUSE No. 1526

By Mr. Fresolo of Worcester, petition of John P. Fresolo relative to the investment laws of life insurance companies. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE INVESTMENT LAWS OF LIFE INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 63 of chapter 175 of the Massachusetts
2 General Laws shall be amended by adding after paragraph 14A
3 the following new paragraph, 14A½:—
4 14A½. Notwithstanding the provisions of paragraph 14A, a
5 domestic stock or mutual life company may invest three fourths of
6 its reserve in obligations issued, assumed or guaranteed by busi-
7 ness entities organized under the laws of the United States or any
8 state thereof or in the Dominion of Canada or any province or ter-
9 ritory thereof or in obligations that are foreign investments
10 without regard to the limitations that appear in paragraph 14A,
11 provided that: (a) either the obligations, or the long-term debt of
12 the business entity or business entities issuing, assuming or guar-
13 anteeing the obligations, (1) are initially rated at least BBB- or
14 Baa3 or the equivalent thereof by any of the nationally recognized
15 statistical rating organizations recognized by the NAIC-SVO,
16 (2) are initially rated one (1) or two (2) by the NAIC-SVO subse-
17 quent to such acquisition, or (3) subject to the NAIC-SVO's initial
18 rating if not successfully appealed by the insurer, are provision-
19 ally rated NAIC-SVO 1Z or 2Z by the insurer; and (b) if, after
20 giving effect to each investment in an obligation that is a foreign
21 investment, (1) the aggregate amount of foreign investments then
22 held by such domestic stock or mutual life company under this
23 sentence would not exceed fourteen percent (14%) of its admitted
24 assets and (2) the aggregate amount of foreign investments then

25 held by such domestic stock or mutual life company under this
26 sentence is a single foreign jurisdiction would not exceed eight
27 percent (8%) of such company's admitted assets.

28 "Business entity" includes a sole proprietorship, corporation,
29 limited liability company, association, general or limited partner-
30 ship, joint stock company, joint venture, mutual fund, bank, trust,
31 real estate investment trust, joint tenancy or other similar form of
32 business organization, whether organized for-profit or non-profit.

33 "Foreign investment" means an investment in, or an investment
34 in a company, person, real estate or asset domiciled in, a jurisdic-
35 tion other than the United States or any state thereof, or Canada or
36 any province or territory thereof. An investment shall not be
37 deemed to be foreign if the issuing person, qualified credit source
38 or qualified guarantor is, or is a person or company organized or
39 domiciled in, the United States or any state thereof, or Canada or
40 any province or territory thereof, unless:

41 (A) The issuing person is a shell business entity; and

42 (B) The investment is not assumed, accepted, guaranteed or
43 insured or otherwise backed by the United States or any state
44 thereof, or Canada or any province or territory thereof, or a person
45 which is not a shell business entity that is domiciled in the United
46 States or any state thereof, or Canada or any province or territory
47 thereof.

48 For the purposes of this definition:

49 "Shell business entity" means a business entity having no eco-
50 nomic substance, except as a vehicle for owning interests in assets
51 issued, owned or previously owned by a person domiciled in a
52 foreign jurisdiction;

53 "Qualified guarantor" means a guarantor against which an
54 insurer has a claim for full and timely payment, evidenced by a
55 contractual right for which and enforcement action can be brought
56 in the United States or Canada or any political subdivision
57 thereof;

58 "Qualified credit source" means the credit source to which an
59 insurer looks for payment as to an investment and against which
60 an insurer has a claim for full and timely payment, evidenced by a
61 contractual right for which an enforcement action can be brought
62 in the United States or Canada or any political subdivision
63 thereof;

64 “Foreign jurisdiction” means a jurisdiction other than the
65 United States or any state thereof, or Canada or any province or
66 territory thereof;

67 “NAIC-SVO” means the Securities Valuation Office of the
68 National Association of Insurance Commissioners; and

69 “Obligation” means a note, bond, debenture, trust certificate,
70 equipment trust certificate, production payment, negotiable bank
71 certificate of deposit, bankers’ acceptance, asset-backed security,
72 NAIC-SVO credit tenant loan, loan secured by financing a net
73 lease or net leases, and other evidence or indebtedness or other
74 obligation for the payment of money (or participations, certifi-
75 cates or other evidences of an interest in any of the foregoing),
76 whether constituting a general obligation of the issuer or payable
77 only out of certain revenues or certain funds pledged or otherwise
78 dedicated for payment.

1 SECTION 2. Section 66E of chapter 175 of the Massachusetts
2 General Laws is hereby amended by striking the first sentence in
3 its entirety and replacing it with the following:—

4 A domestic life company may invest in or otherwise acquire
5 and hold a limited partnership interest in any limited partnership
6 formed (1) pursuant to chapter one hundred and nine or (2) pur-
7 suant to the laws of any state or of the United States, or Canada or
8 any province or territory thereof or (3) pursuant to the laws of any
9 foreign jurisdiction that has a long-term debt rating at the time the
10 investment is made of at least A- or A3 or the equivalent thereof
11 by any of the nationally recognized statistical rating organizations
12 recognized by the NAIC-SVO.

1 SECTION 3. Section 66F of chapter 175 of the Massachusetts
2 General Laws is hereby amended by striking the first sentence in
3 its entirety and replacing it with the following:—

4 A domestic life company may invest in or otherwise acquire
5 and hold a limited liability company interest in any limited lia-
6 bility company formed (1) pursuant to the General Laws or
7 (2) pursuant to the laws of any state or of the United States, or
8 Canada or any province or territory thereof, or (3) pursuant to the
9 laws of any foreign jurisdiction that has a long-term debt rating at
10 the time the investment is made of at least A- or A3 or the equiva-

11 lent thereof by any of the nationally recognized statistical rating
12 organizations recognized by the NAIC-SVO.

1 SECTION 4. Section 63 of chapter 175 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 inserting in line 101 after the word “unexpired” the following:—
4 “as of the date of the loan, including all renewal or extension
5 terms the exercise of which is within the control of the borrower
6 or the lender,”.

1 SECTION 5. Section 63 of chapter 175 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 striking in lines 152 and 153 the words “ and payments of interest
4 only may be made for a period not to exceed five years” and
5 inserting in place thereof the following:—
6 “except that payments of interest only may be made for a
7 period not to exceed five years for loans with a loan to value ratio
8 in excess of sixty per cent”.

1 SECTION 6. Section 63 of chapter 175 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 striking the text following the words “eighty-three” in line 157
4 through line 175 and inserting in place thereof the following:—
5 “No loan on such real property or such leasehold estate which
6 is a participation or a part of a series or issue secured by the same
7 mortgage instrument shall be authorized by this paragraph unless
8 (1) the entire series or issue, which is secured by the same mort-
9 gage instrument, is held by the company, (2) the company holds a
10 participation in such mortgage instrument giving it substantially
11 the rights of a first mortgagee, or a mortgagee under paragraph 7B
12 or (3) the loan is evidenced by one or more bonds, certificates,
13 notes or other evidences of indebtedness held by such company or
14 such company holds a participating interest therein and such
15 bonds, certificates, notes or other evidences of indebtedness form
16 part of a series or issue of obligations or aggregate amount of
17 indebtedness secured by a mortgage instrument to a domestic or
18 foreign insurer admitted and qualified to transact business in the
19 commonwealth or in trust to a bank or trust company or other
20 entity, with or without a co-trustee, competent to act as trustee or

21 collateral agent in the state of its domicile, provided that (i) the
22 bonds, certificates, notes or other evidences of indebtedness give
23 the holder substantially the rights of a first mortgagee, or a mort-
24 gagee under paragraph 7B, (ii) the total amount of each series or
25 issue or the aggregate amount of indebtedness complies with the
26 restrictions of this paragraph respecting the ratio of loan to fair
27 market value, and (iii) the security for such loan complies with all
28 other provisions of this paragraph.”.